

SERVED: March 1, 2002

NTSB Order No. EA-4956

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 27th day of February, 2002

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15995
v.)	
)	
LUIS OLIVER,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on February 28, 2001, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. 91.123(a) and 91.13(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91).² We

¹ The initial decision, an excerpt from the transcript, is attached.

² Section 91.123(a), with exceptions not pertinent here,
(continued...)

deny the appeal.

There is no disagreement that, in giving respondent departure instructions, ATC directed that he hold short even with the tower, so that a taxiing vehicle (a golf cart) could traverse the runway. Respondent failed to do so. ATC alerted him more than once. The driver of the golf cart felt endangered by the approaching aircraft and veered off the runway into the grass.

Respondent's factual defense is twofold: that he did not pass the tower until the golf cart had moved off onto the grass and was no longer in danger, having it in sight at all times; and that ATC superseded the clearance to stop and had authorized him to proceed with caution. The first response ignores the required relationship between pilots and ATC. He was directed to hold at a particular location; not to wait until he thought it was safe to proceed. He must follow the exact directions given him until ATC directs otherwise. The second answer was rejected by the law judge and we have no basis to overrule this credibility determination.³

Respondent argues that it was the Administrator's obligation

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prohibits deviations from Air Traffic Control (ATC) instructions. Section 91.13(a) prohibits careless and reckless operations that may endanger the life or property of another.

³ The controller testified that he had directed respondent to proceed to abeam with the tower and to give way to the golf cart. Later, when respondent was not stopping despite repeated direction to do so, the controller told him to use caution. Tr. at 22. In the circumstances, with the golf cart still on the tarmac, this could not and should not reasonably have been

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to present the ATC tape or transcript of the event to prove her case. While such evidence surely would have been relevant, it was not available (it is not required to be), and was not necessary to provide respondent a fair hearing. The involved controller testified, and respondent had full opportunity to examine him.

Respondent's other claims on appeal offer no grounds to reverse. Regardless of any possible witness bias (i.e., respondent's continuing claims about the bias and ulterior motives of the controller), the facts, including respondent's own testimony, clearly support the law judge's factual finding.⁴ There are no "complainants" in these cases other than the Administrator; the (alleged) reasons for a private individual making a complaint to the FAA can, and were, fully aired at the hearing. Again, the law judge was apprised of respondent's allegations and was not persuaded.

Regardless of respondent's violation history, it is the FAA's prerogative to issue an order of suspension, and to consider a respondent's past history in setting the sanction. The Board's role is limited. Administrator v. Kaolian, 5 NTSB 2193, 2194 (1987) ("We also find no merit in the argument that the law judge erred in refusing to allow respondent to present

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interpreted as authority to proceed without stopping.

⁴ In any case, the law judge had the opportunity to witness the demeanor of those testifying and weigh their credibility.

evidence of what respondent claimed were selective enforcement policies on the part of the FAA. Such evidence, which goes to the matter of prosecutorial discretion exercised by the enforcement agency, is clearly irrelevant to the Board's adjudication of this or any other case. The Board's role is to review the evidence in a particular case to determine if it supports the allegations against the particular respondent.").

As respondent's brief acknowledges (page 5), the sanction ultimately imposed here (90 days) was within the written guidelines for ATC deviations. There is no basis – including respondent's claim of contributory negligence – for a further reduction. Indeed, respondent's actions, in our view, were very serious. No pilot should be second-guessing ATC and deciding to proceed without permission to do so, no matter how clear he thinks the runway.

We see no mitigating factors. Administrator v. Mohamed, NTSB Order No. EA-2834 (1988) at p. 11, and cases cited there (consideration of the impact of the sanction on the individual is directly contrary to established precedent). See also Administrator v. Williams, NTSB Order No. EA-3588 (1992) at 7 (citing Administrator v. Thompson, NTSB Order No. EA-3247 (1991) at 9 (neither violation-free record nor good attitude justifies reduction of sanction)).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 90-day suspension of respondent's certificate shall

begin 30 days after the service date indicated on this opinion and order.⁵

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁵ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).